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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/712,114

11/13/2003

Robert J. Yatka

1391/1561

7674

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EXAMINER

CORBIN, ARTHUR L

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

05/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/712,114

Applicant(s)

YATKA ET AL.

Examiner

Arthur L. Corbin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02-06-06, 03-05-07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6,11,24-27,30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6,11,24-27,30 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 5, 2007 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 6, 11, 24-27, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nofre et al (5,460,668, cols. 4-6 and claim 3) in view of Yotka et al (4,997,659, col. 6) as set forth in paragraph no. 7, Paper No. 081104. Further, applicant's panning procedure is well known according to Yotka et al (Abstract).

4. Claims 6, 11, 24-27, 30 and 31 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Nofre et al (5,510,508, cols. 1 and 6) or Nofre et al (5,460,668, cols. 4-6 and claim 3) in view of Glass et al (4,374,858, col. 1, line 62 to col. 2, line 13 and col. 3, lines 1-12) as set forth in paragraph no. 4, Paper No. 070505. Also, see the last sentence in paragraph no. 3 above.

5. Applicant's arguments filed February 6, 2006 have been fully considered but they are not persuasive. Since Nofre et al ('668) uses alitame and an aspartame derivative

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together in chewing gum (see applicant's claims 6 and 11, where alitame is recited) and since Yotka et al suggests applying aspartame as part of a rolling compound or as part of a coating to chewing gum it thus becomes obvious to apply to chewing gum any sweetener mixture, which includes alitame, in the manner disclosed in Yotka et al, i.e. by a panning procedure, or by a coating procedure on a gum pellet. There is no disclosed reason to separate the alitame from the aspartame derivative in Nofre et al ('668) and apply them separately to chewing gum by two different techniques, e.g. coat with alitame and mix with an aspartame derivative. Further, although Yotka et al does not disclose the use of sweeteners, other than alitame, as part of a rolling compound or coating on chewing gum, as applicant contends, the fact that Yotka et al suggests using a well known sweetener in such a manner would lead the skilled artisan to conclude that it would have been obvious to use applicant's claimed and well known coating concept with other conventional chewing gum sweeteners. Applicant's conclusion that the use of one sweetener in a particular manner does not mean that it would have been obvious to use other sweeteners accordingly, is without merit. Otherwise, applicant would have us believe that every time a different but similar sweetener is used in applicant's process, such a process would be patentable. This would clearly not be a convincing argument.

Applicant's remarks with regard to Glass et al are also not convincing. Glass et al applies aspartame itself to chewing gum as part of a rolling compound. Aspartame is similar in some of its properties and closely related chemically to applicant's claimed N-substituted aspartame derivative (neotame), as applicant admits on page 10 of the brief,

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thereby rendering it obvious to apply either type of aspartame to chewing gum in the same manner regardless of the reason for doing so. This assertion is true regardless of the fact that the FDA did not approve use of neotame as a sweetener in foods until July, 2002, according to the brochure in Appendix A submitted by applicant, as applicant contends, since FDA approval has no bearing on patentability. Moreover, the solubility differences between alitame and neotame, denoted by the brochure in Appendix B submitted by applicant, and any release differences between these two sweeteners, discussed by applicant on page 6 of the remarks, are insufficient to detract from using alitame and neotame as alternative sweeteners since both provide increased sweetening to food products. Lastly, the fact that neotame, an N-substituted aspartame derivative, is 30-60 times sweeter than aspartame according to page 8 of applicant's remarks, and would be used in foods at much lower concentrations than aspartame, as described in the brochure in Appendix C submitted by applicant, is totally expected due to the increased sweetness intensity thereof.

6. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Arthur L. Corbin', written over a horizontal line.

Arthur L. Corbin  
Primary Examiner  
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5-15-07